

FILED IN CHAMBERS
HONORABLE DANIEL A WASHBURN
BY: KAS
DATE: 10/31/2014
TIME: 4:38 pm

IN THE SUPERIOR COURT

PINAL COUNTY, STATE OF ARIZONA

Date: 10/31/2014

THE HON DANIEL A WASHBURN.

By Judicial Administrative Assistant: KATHY SHERWOOD

THE BANK OF NEW YORK MELLON, FKA)	<u>S1100CV201402273</u>
The Bank of New York, as Trustee for the)	
certificate holders of Cwalt, Inc., Alternative,)	NOTICE
Loan Trust 2005-63, Mortgage Pass-)	
Through Certificates, Series 2005-63, its)	RULING RE: MOTION TO DISMISS
assignees and/or successors-in-interest,)	
)	
Plaintiff(s),)	
)	
vs.)	
)	
WENDLE V. LEHNERD,)	
)	
Defendant(s).)	

The Court has considered (i) Defendant's Motion to Dismiss for Lack of Jurisdiction, (ii) Plaintiff's Response to Defendant's Motion to Dismiss for Lack of Jurisdiction and (iii) Defendant's Reply to Plaintiff's Response to Motion to Dismiss and FINDS good cause to deny Defendant's Motion to Dismiss.

Plaintiff's original Complaint seeks to have Defendant and any other occupants residing at the property generally described as 33276 N. Cherry Creek Road, Queen Creek, Arizona ("Property") removed from the premises and award Plaintiff exclusive possession thereof. Defendant's Motion requests that the Complaint be dismissed because there exists a pending legal action in the U.S. District Court involving both parties to determine the ownership rights to the Property. According to Plaintiff's Response to the Motion to Dismiss, Defendant's claim in federal court is whether the deed of trust or trustee's deed from the sale of the Property, or both, are invalid or void/voidable.

Defendant's Motion to Dismiss alleges that the Court lacks jurisdiction to hear Plaintiff's Complaint because the U.S. District Court has "prior-exclusive jurisdiction" to all rights related to the Property. Defendant believes that this Court has no jurisdiction to proceed with a forcible detainer on the issue of possession; however, Defendant failed to cite any record in the U.S. District Court case where that court asserted jurisdiction over the issue of possession to the Property. Furthermore, Defendant failed to provide any record showing the U.S. District Court case includes the issue of possession to the Property.

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Defendant's allegation that this Court lacks jurisdiction is in direct opposition to the statutory intent of the forcible detainer laws and contrary to Curtis v. Morris, 186 Ariz. 534, 925, P.2d 259 (1996). In Curtis the Arizona Supreme Court looked at whether the trial court had authority to consider a forcible detainer action when an earlier case was filed in a separate trial court and the issue of title was raised. Although the two court cases dealt with the same property, the Arizona Supreme Court held that the issues raised in each case were not substantially identical and that the forcible detainer action was limited to the issue of possession.

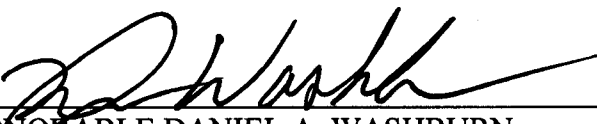
In a forcible detainer action, the only question to be considered by the Court is who has the right to possession to the Property, not who has a right to title. Taylor v. Stanford, 100 Ariz. 346, 414 P.2d 727 (1966); A.R.S. § 12-1177(A). Title is not an issue in the forcible detainer action because the issuance of a trustee's deed is conclusive evidence that the statutory requirements of A.R.S. § 33-811(A) for the trustee's sale of the property were satisfied. See Triano v. First American Title Insurance Company of Arizona, 131 Ariz. 581, 643 P.2d 26 (App. 1982). The copy of Plaintiff's trustee's deed attached to its Response is conclusive evidence that the Plaintiff has met the statutory requirements.

Based on the above, the Court FINDS that Defendant's U.S. District Court action has not removed jurisdiction from this Court to consider the issue of possession to the Property. Therefore, it is ORDERED denying Defendant's Motion to Dismiss for Lack of Jurisdiction filed on October 15, 2014.

IT IS FURTHER ORDERED affirming the hearing on November 21, 2014 at 2:30 p.m. before Judge Henry G. Gooday.

IT IS FURTHER ORDERED signing this ruling as a formal order of this Court pursuant to Rule 58 of the Arizona Rules of Civil Procedure.

DATED the 21 day of October, 2014.



HONORABLE DANIEL A. WASHBURN
JUDGE OF THE SUPERIOR COURT

Mailed/distributed copy: 10/31/2014

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